



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
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Alexandria, VA
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March 16, 2006

Memo Code: SP 15-2006

SUBJECT: School Districts and Federal Procurement Regulations

TO: State Agency Directors
Special Nutrition Programs
All States

In October of 2001, we asked our Regional Offices to advise their respective State agencies that Department's regulations (7 CFR Part 3016.36(b)) prohibit the awarding of contracts to any entity that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other procurement documents. This guidance was issued upon our learning that a number of school food authorities (SFAs) were not drafting their own specifications and procurement documents for certain software acquisitions but instead directly incorporating a list of features written by a prospective bidder. We continue to receive complaints of SFAs using a prospective bidder to draft specifications and procurement documents and feel that this potential continued noncompliance with Departmental regulations warrants our addressing the issue directly with the respective State agencies.

We are asking that State agencies carefully monitor SFA compliance with these regulations and take appropriate actions. In failing to fulfill its responsibilities to draft its own specifications and procurement documents, an SFA which copies a list of features or evaluation and ranking criteria drafted by a potential vendor and then permits that potential vendor to submit a bid has violated Department regulation 7 CFR Part 3016.60(b). While schools have broad discretion in gathering information for use in connection with procurements, information from potential bidders must be appropriately modified to develop tailored specifications; otherwise these bidders must be excluded from competing for such procurements. This is to ensure objective contractor performance and eliminate unfair competitive advantage. A person that develops or drafts specifications, requirements, statements of work, invitations for bid, requests for proposals, contract terms and conditions or documents specifically for use by an SFA in conducting procurement under the CND programs shall be excluded from competing for such procurements.

Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests. Therefore, please remind your respective SFAs that they must have protest procedures in place and disclose information regarding a protest to the State agency. We are concerned that SFAs may not be properly responding to protests and concerns raised by potential contractors. Pursuant to §3016.36(b) (12), SFAs must have protest procedures in place to

handle and resolve disputes relating to their procurements and must in all instances disclose information regarding a protest to their State agency.

If you have any questions, please contact Melissa Rothstein, Branch Chief, Program Analysis and Monitoring Branch, (703) 305-2590.

A handwritten signature in dark ink, appearing to read "Stan C. Garnett". The signature is fluid and cursive, with the first name "Stan" and last name "Garnett" clearly distinguishable.

STANLEY C. GARNETT
Director
Child Nutrition Division